



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 26, 1995

Mr. David M. Feldman
Feldman & Associates
Attorneys at Law
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR95-217

Dear Mr. Feldman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28608.

The Fort Bend Independent School District (the "school district"), which you represent, has received a request for information relating to an investigation of the superintendent, Dr. Raj K. Chopra. Specifically, the requestor seeks the following information:

1. Any and all information regarding the "dismissal" of Dr. Raj Chopra, including but not limited to the official findings in each case.
2. Any and all information regarding the investigations and findings regarding the investigations of:
 - a. Dr. Raj Chopra
 - b. Mr. David Collins
3. Any and all information regarding the investigations in item 2 to include:

- a. Who initiated the investigation
 - b. Who approved the investigation
 - c. Who paid (from what budget item)
 - d. Costs of investigation
 - e. Results of investigation (findings)
4. Official evaluations regarding Dr. Chopra's performance as superintendent since the inception of his contract.

You have made some of the requested information available to the requestor. However, you object to release of the remainder of the requested information, to the extent that it exists, and claim that sections 552.101, 552.102, 552.107, and 552.111 of the Government Code except it from required public disclosure.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with common-law privacy. You also assert section 552.102, which excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information only if its release would cause an invasion of privacy under the test articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information must be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Generally, the public has a legitimate interest in the job qualifications of public employees, and the reasons for their dismissal, demotion, promotion or resignation. Open Records Decision Nos. 470 (1987), 467 (1987), 444 (1986), 405 (1983). We have examined the records submitted to us for review. We conclude that the information is neither intimate nor embarrassing and there is a legitimate public interest in its release. Accordingly, the submitted information may not be withheld from required public disclosure under sections 552.101 and 552.102 of the Government Code.

You also assert that a letter from you to the superintendent's counsel and a document that briefly summarizes the allegations and responses to the allegations are protected by section 552.107 of the Government Code. Section 552.107 excepts information if "it is information that ... an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." Section 552.107(1) protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. See Open Records Decision No. 574 (1990). The exception does not apply to factual information in investigative reports, even when prepared by an attorney.

See Open Records Decision Nos. 462 (1987), 429 (1985), 230 (1979). This is so because when an attorney conducts an investigation, that attorney is acting as an investigator, rather than as an attorney or legal advisor. See Open Records Decision No. 462 (1987) at 11. Moreover, a governmental body waives the protection of the attorney-client privilege by voluntarily disclosing the material to outside parties. Open Records Decision No. 630 (1994) at 4.

You have submitted for our review two documents for which you seek protection under section 552.107(1). We conclude that the document entitled "ALLEGATIONS-RESPONSES" contains the factual material compiled during the investigations and is therefore not protected under section 552.107(1). Moreover, you state that you furnished continuing oral reports of the investigation to the superintendent and his counsel. Similarly, the attorney-client privilege does not protect the letter dated July 4, 1994, as it was made available to the superintendent's counsel. Accordingly, the school district may not withhold either of the two documents under section 552.107(1) of the Government Code.

You also claim that section 552.111 of the Government Code excepts some of the requested information from required public disclosure. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 (1993). An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. The requested information relates to an internal administrative and personnel matter, that is, the superintendent's evaluations and an investigation into allegations of improper conduct by the superintendent. Accordingly, we conclude that section 552.111 of the Government Code does not except the requested information from required public disclosure.¹ The school district must therefore promptly release the requested information in its entirety.

¹You suggest that this office should reconsider the interpretation of section 552.111 in Open Records Decision No. 615 (1993) in light of a July 25, 1994 ruling in *Klein Independent School District v. Lett*, No. 93-061897 (80th Dist. Ct., Harris County, Tex., July 25, 1994). This office is not a party to that action. Furthermore, appellate courts in Texas do not rely upon unpublished opinions as authority. *Wheeler v. Aldama-Luehbert*, 707 S.W.2d 213, 216 (Tex. App.--Houston [1st Dist.] 1986, no writ) ("An unpublished opinion of this Court or any other court has no authoritative value."); see also Tex. R. App. P. 90(i) ("Unpublished opinions shall not be cited as authority by counsel or by a court."); *Orix Credit Alliance v. Omnibank*, 858 S.W.2d 586, 593 n.4 (Tex. App.--Houston [14th Dist.] 1993, writ dismissed); *Carlisle v. Philip Morris, Inc.*, 805 S.W.2d 498, 501 (Tex. App.--Austin 1991, writ denied). For this reason, the Office of the Attorney General generally does not consider unpublished rulings in making

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 28608

cc: Mr. Jack Molho
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(w/o enclosures)

(Footnote continued)

determinations under the Open Records Act. This office continues to adhere to Open Records Decision No. 615 (1993).